

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session  
March 26, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:39 a.m., on Monday, March 26, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Harry Mortenson (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Jerry Claborn, Assembly District No. 19

Minutes ID: 699



Assemblywoman RoseMary Womack, Assembly District No. 23

**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Doreen Avila, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

Robert Roshak, Sergeant, Office of Intergovernmental Services,  
Las Vegas Metropolitan Police Department  
Tim Kuzanek, Lieutenant, Administrative Services, Government Affairs,  
Washoe County Sheriff's Office  
Darin Garness, Sergeant, Las Vegas Metropolitan Police Department  
Tom Delaney, Deputy Sheriff, Washoe County Sheriff's Office  
Russell Pederson, Sergeant, Washoe County Sheriff's Office  
George Dennison, Aviation Manager, Mercy Air  
Darrell Wade, President, Henderson Police Officers' Association, Inc.  
David Kallas, Director, Government Affairs, Las Vegas Police Protective  
Association  
Lynn Chapman, Vice President, Nevada Eagle Forum  
John Wagner, representing the Burke Consortium, Carson City  
Joseph Turco, Public Advocate, American Civil Liberties Union of Nevada  
Jason Frierson, Deputy Public Defender, Office of the Public Defender,  
Clark County

**Vice Chairman Horne:**

[Meeting called to order and roll called.] On your desks is a memorandum for your review from Ms. Chisel ([Exhibit C](#)) pertaining to Assembly Bill 58. It responds to a question I asked about the negligence standard for first degree murder.

Next we have three committee bill introductions. On behalf of the State Gaming Control Board, we have BDR 41-591.

**BDR 41-591**– Revises provisions governing the regulation of gaming.  
(Later introduced as [Assembly Bill 535](#).)

This deals with persons required to register as gaming employees, foreign limited liability companies, and foreign limited partnerships. It revises the provisions governing the acquisition or disposition of certain interests in limited

liability companies and limited partnerships; and prohibiting certain acts involving counterfeit wagering instruments and counterfeit promotional items, et cetera.

BDR S-1073 is a cleanup bill ratifying the correction of certain clerical errors and the resolution of certain statutory conflicts in legislative enactments from previous sessions.

**BDR S-1073**– Ratifies resolution of conflicts between legislative enactments from past sessions. (Later introduced as [Assembly Bill 534](#).)

BDR 38-1405 deals with child support, prospectively transferring the authority for program enforcement of child support and related services from the District Attorneys to the Division of Welfare and Supportive Services of the Department of Health and Human Services.

**BDR 38-1405** – Makes various changes concerning child support enforcement. (Later introduced as [Assembly Bill 536](#).)

ASSEMBLYMAN MANENDO MOVED TO INTRODUCE BDR 41-591, BDR S-1073, AND BDR 38-1405.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON, MORTENSON, AND OCEGUERA WERE ABSENT FOR THE VOTE.)

**Vice Chairman Horne:**

We will open the hearing on [Assembly Bill 307](#).

**[Assembly Bill 307](#):** Prohibits the use of certain lasers and other light sources to interfere with the operation of an aircraft. (BDR 15-1181)

**Assemblyman Jerry Claborn, Assembly District No. 19:**

This is a short but important bill. It deals with laser lights and an enormous, one-million candlelight handheld spotlight. It is a very bright light that has hit the streets in the city of Las Vegas and probably elsewhere. We dealt with a similar bill back in 2003. I sat on that very committee and I can remember how important that bill was to the Las Vegas Metropolitan Police Department as they fight street crime, but it is even more important now.

We are not here today to ban these powerful lights. They are useful for search and rescue. We are here to talk about when they are used in the wrong way. We are looking for a way to make it unlawful to shine these bright lights into a pilot's eyes when he or she is flying an aircraft, be it an airplane, helicopter or any flying machine. Metro says they are seeing a rash of this. They are receiving more complaints every day. Today you will hear interesting testimony about what these perpetrators do. When Metro tries to apprehend them, the perpetrators shine this enormous light beam into the eyes of the pilot and he has to veer off for safety reasons, making the criminals difficult to apprehend. These lights are tools that need to be reckoned with.

**Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

We thank Mr. Claborn for bringing this bill forward from our air support section. We are not looking to ban the use of lights. We are just looking to bring a statute into the State of Nevada indicating that if an individual shines a light, whether it be a white light or a laser, into the eyes of a flight crew, that we would have a *Nevada Revised Statute* (NRS) with which to charge them. Violation of the provision that does not result in injury to a person on the aircraft or damage to the aircraft would be a misdemeanor. A violation that does result in injury to any person on the aircraft or damage to the aircraft would be a category E felony.

**Tim Kuzanek, Lieutenant, Administrative Services, Government Affairs, Washoe County Sheriff's Office:**

The Washoe County Sheriff's Office is in full support of this. We see it as a tool to help protect our aircraft personnel, most specifically our helicopter flight crews who fly at lower altitudes over our city. The usefulness of that operation has been unbelievable over the last several years. We also have a number of private aircraft pilots who work along with our search and rescue unit, and their protection is no less important.

**Vice Chairman Horne:**

Is there some overlap in federal law on this? In your testimony you speak primarily of law enforcement helicopters. I assume there is already a federal statute in place that deals with shining lights and lasers in the eyes of pilots. I know there was a problem with this at airports.

**Robert Roshak:**

There is federal law that deals with causing harm or interfering with a flight crew, but that is federal legislation. We have attempted to use that on a couple of occasions and have had difficulty.

**Vice Chairman Horne:**

What type of injuries have we seen from this type of conduct, if any?

**Tim Kuzanek:**

We have not experienced any injuries here in Washoe County. However, our pilots have had to make evasive maneuvers when a light or a laser has been directed at them while they are in the air.

**Assemblyman Carpenter:**

What would happen if they did interfere with the aircraft and the aircraft came down and there were injuries or deaths? Is there any other statute that would take over? You said it is just a category E felony so there must be some other statute that would apply if there was an injury or a death. Maybe Legal could answer that question. It seems to me a category E felony is a small price to pay if you kill somebody.

**Vice Chairman Horne:**

I am assuming there would be other charges that would be applicable.

**Risa Lang, Committee Counsel:**

I would have to look at the other statutes, but I am assuming if somebody died it might fall under the murder statutes if it was intentional, or one of the other statutes.

**Vice Chairman Horne:**

Anything from manslaughter to voluntary manslaughter and on up.

**Darin Garness, Sergeant, Las Vegas Metropolitan Police Department:**

I am currently assigned to the air support section. I have been involved with law enforcement aviation for the last eight years and have noticed an alarming increase in lasers and high intensity lights being shined at our aircraft. It is not only the police helicopters but also commercial airlines which are getting hit while on approach into McCarran Airport. General aviation private pilots and flight instructors flying in North Las Vegas, Henderson, and Boulder City, as well as air ambulance crews that fly through the Las Vegas Valley are getting hit with these.

We have noticed that we also have no way of trying to stop these individuals from doing this. We have tried to use the federal statute without success. For example, last year at the Laughlin River Run we were hit with a very high-intensity bright light while we were wearing night vision goggles. We found out this was a 15-million candlelight power handheld one can buy at Costco or Sam's Club for under \$50. That is half the strength we use in our aircraft when

we are searching for bad guys. When it hit us with the goggles on, it completely blinded us. We had to implement emergency procedures. We had to take the goggles off, turn away from the light, and try to get our night vision back. We went to instruments immediately and maintained our altitude, then the perpetrator took off running with this light and we chased him all over the place.

When we took him into custody, we were trying to decide how to deal with this individual. He was drunk and trying to impress his friends at the River Run. We thought we could try to use the federal statute, but the statute against interference with a flight crew is used primarily for when passengers are interfering with the flight crew. That was the intent of the bill at the federal level. As the case went through the federal system, the Attorney General was not going to go through with it because it was inconsistent with the original intent of the statute. And because it was such a high felony, they were looking at putting this guy in prison for one to six years for shining the light. It did not cause any injuries or damage to the aircraft or anybody on the ground, but that is a pretty harsh penalty. So I decided this would be a good time to come up with a bill we could use that would give us two different ways of dealing with people: A misdemeanor for people who are just being stupid or drunk which would enable us to cite or arrest them for the crime; if there were injuries or damage to the aircraft, it would be a felony.

One of you asked whether there have been any injuries due to lasers or high-intensity lights. There have been injuries. I have been hit with lasers and it has caused headaches. Sometimes it takes 20-30 minutes just to get the night vision back in your eyes. There have been cases of higher-grade lasers being used against some of our military pilots who have had blistering on the eyes. You could even lose your vision. Our jobs rely on our vision in order to maintain our pilot certificates.

There are currently no laws in the city of Las Vegas or Clark County and there is nothing in NRS that addresses this problem. We have tried to track down these guys shooting at our commercial airline pilots. We get contacted by the control tower at McCarran Airport two to three times a week. What happens when these pilots lose control of the aircraft because they are blinded and we end up with something catastrophic? It does not take very long to lose control of an aircraft, especially at lower altitudes. When commercial airline pilots are coming in they are only about 2,000 feet above the ground on their final approaches into these major airports and they are not flying on computers when they are that low. It would be very catastrophic if those pilots were blinded and unable to land that aircraft. It is the same thing for us; 500 feet above the ground is our normal patrol altitude. It only takes several seconds to lose control.

**Vice Chairman Horne:**

You mentioned complaints from McCarran about lights shining at commercial pilots and that was one of my concerns. I am pretty sure there have been some prosecutions at the federal level dealing with shining lights at pilots landing and taking off at airports. I am curious to see what that language is and maybe we can use it. In this bill we have two standards: Injury and non-injury. You mentioned a headache as one injury pilots might suffer. We need to get Legal to look at how the federal law deals with shining a laser light in a pilot's eyes.

**Assemblyman Ohrenschall:**

Is there any lawful reason private citizens should have this kind of dangerous laser? Would it be too much for us to talk about making it something that you need a license to possess?

**Darin Garness:**

I do not see a reason to make people have a license or make it illegal because there is a purpose for having the high-intensity lights and for having the lasers. A lot of these lasers are the ones that are on firearms. Sometimes when we are being hit with a laser we do not know if it is attached to a rifle or a handgun or just a pointer that is used in a classroom setting. Professors use lasers all the time. The academy staff at our department uses them. I used them for my flight instruction training, so they do have a purpose. The problem is when they are used maliciously to try to hurt pilots and keep us from doing our job.

**Tom Delaney, Deputy Sheriff, Washoe County Sheriff's Office:**

We have been hit by lasers many times. It totally blinds you in the cockpit, and it is the same thing with high-intensity lights. At best we end up not completing our mission and leaving the area. At worst there is disorientation. We have not crashed an aircraft yet, but it is definitely a possibility. The only federal regulation that deals with this issue is the one discussed already: Interference with a flight crew. The federal government decided not to prosecute the individual in that case. It is a problem and we do need a law in place.

We have nightvision goggles on board the aircraft. I could see a \$10,000 pair of goggles being destroyed with the right wavelength laser or light. If the aircraft actually crashed and people died, I am sure there would be some charges filed other than the class E felony.

**Russell Pederson, Sergeant, Washoe County Sheriff's Office:**

I bought this chargeable 10-million candle power light over the weekend at a local store for \$29.99. You can walk around with it. Here is a \$30 laser pointer I bought at a local office store. It goes up to 500 yards. They make them much stronger but 500 yards is well within the range that we are flying. I got on the

Internet and found a particular company boasting about a laser that will light your cigarette, burn your skin, start a fire, and it is one of the most powerful over-the-counter type lasers you can buy. They are out there on the market and they can cause serious damage to the pilots, both fixed-wing and rotor-wing. I would like to see something on the books so we can get the message out that this is not a joke before somebody does get hurt.

In Deputy Delaney's case, they were getting hit with a laser four or five times by this individual and they were finally able to find him. This bill would give reasonableness to the law by allowing both the District Attorney's Office and the law enforcement on scene to say whether it is a misdemeanor or a felony.

**Assemblyman Carpenter:**

The bill says "any light emitted from a laser device or other source." I am wondering if the definition is specific enough that it will include the kind of lights you have there. Are there any on the market other than the large flashlight you have?

**Russell Pederson:**

We did have that discussion. There should be some consideration on the definition of a light source. Yes, there are other handheld devices that are stronger out there on the market and I think that is something we need to look at.

**Vice Chairman Horne:**

There is a definition of a laser device here in the bill under Section 1, subsection 3(b).

**Assemblyman Carpenter:**

I saw that. I was wondering whether these other devices fall under the definition of a laser.

**Vice Chairman Horne:**

Flashlights would not fall under that definition. It mentions "or other source" in subsection 1 of Section 1.

**Assemblyman Carpenter:**

I was just wondering if we ought to be more specific in defining it.

**Russell Pederson:**

The laser itself, although it is a small light, is capable of blinding somebody. When they are flying with nightvision goggles, it does not take much to take that night vision away, and take it away for quite a long time.



**George Dennison, Aviation Manager, Mercy Air:**

From the civilian side, we wholeheartedly agree with this effort to put this bill in place. My other pilots and I have also been hit with lights and laser lights in the course of doing business. Although they are mostly in the urban area, it is a concern. Being a former police officer, one concern I have is that you do not know if it is a laser light or a firearm laser.

**Vice Chairman Horne:**

I will close the hearing on A.B. 307.

[Chairman Anderson returns.]

**Chairman Anderson:**

I will open the hearing on Assembly Bill 323.

**Assembly Bill 323:** Revises the amount paid to witnesses for mileage in traveling to and from a proceeding. (BDR 4-1176)

**Assemblywoman RoseMary Womack, Assembly District No. 23:**

A.B. 323 relates to witnesses. It is a small change pertaining to the amount that is paid to witnesses for mileage and traveling to and from proceedings. The last change in this bill was in 1981 when it was increased to 19 cents. We are asking in Section 1(b) that it be the same amount as what is allowed for the federal income tax or the federal standard, which today is 48 and a half cents. In the information coming to you I included the partial fiscal impact ([Exhibit D](#)). They will not have the full impact until March 28, so you will have it for work session. You will see that some counties are not affected and Clark and Washoe Counties will be affected the most.

**Darrell Wade, President, Henderson Police Officers' Association, Inc.:**

[Read from prepared testimony ([Exhibit E](#)).]

**David Kallas, Director, Government Affairs, Las Vegas Police Protective Association:**

I would like to thank Assemblywoman Womack and all the cosponsors of this bill for recognizing the need, as Mr. Wade explained, to compensate and reimburse our witnesses for doing their civic duty by coming to court and testifying on behalf of the State, cities, and counties so that it makes our job a little bit easier. As Assemblywoman Womack and Mr. Wade explained, there has been no change in the reimbursement for witness fees for over two decades. With the cost of gas and taking care of vehicles, we think the only reasonable thing to do is reimburse our witnesses for their actual costs of attending court as witnesses.

We would ask the committee on behalf of witnesses, the Las Vegas Police Protective Association, and the Southern Nevada Conference of Police and Sheriffs to support A.B. 323.

We also recognize the fiscal impact this is going to have on some counties. If we cannot increase the mileage to the current federal reimbursement rate, we ask that you try to reach some middle ground and at least recognize that we cannot continue to ask witnesses to come to court and assist us in doing our jobs without reimbursing them somewhat for their actual costs of getting to and from court.

**Chairman Anderson:**

Ms. Womack, it appears the real issue is not us setting a standard fee, but moving to the federal standard. That is the issue that is really in front of us.

**Assemblywoman Womack:**

That is correct.

**Chairman Anderson:**

While there is a fiscal note attached which could harm the bill, the question is whether we shall set the fee or adhere to the federal standard.

**Assemblyman Segerblom:**

Ms. Womack, do you know what we pay ourselves for mileage?

**Assemblywoman Womack:**

Yes. It is the federal standard of 48 and a half cents.

**Assemblyman Segerblom:**

It seems unfair to pay witnesses less than we pay ourselves.

**Assemblywoman Womack:**

I agree.

**Chairman Anderson:**

That was the point I was making. We all get compensated at this level. So should they.

**Assemblywoman Womack:**

The full impact will be available on March 28 and I will get it to you, Mr. Chairman.

**Chairman Anderson:**

I will close the hearing on A.B. 323.

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS  
ASSEMBLY BILL 323.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSEN WAS  
ABSENT FOR THE VOTE.)

Let us open the hearing on Assembly Bill 398.

Assembly Bill 398: Revises provisions concerning justifiable homicide.  
(BDR 15-1286)

**Assemblywoman Francis Allen, Assembly District No. 4:**

Some states call this bill the Castle Doctrine. Other states call it the Stand Your Ground Law. Whatever you want to call it, A.B. 398 is a bill that would make it easier for our fellow Nevadans to defend themselves. If there is a predator in a person's home, he does not have time to worry about whether his fear is reasonable. If he is in the middle of a carjacking and he is lucky enough to be able to defend himself and his family, he should not have to worry about what a jury has to say about it. Nevadans, like many Americans, have a right to be innocent until proven guilty. The burden of proving self-defense should not be in any respect weighed against the individual. This bill is about giving Nevadans peace of mind.

In changing the language to "reasonable fear" from "bare fear," we will be making a stand in favor of protecting people's homes. In specifically adding people's cars to the list in response to an ever-increasing number of carjackings, we will be giving Nevadans the opportunity to rise up and say "not me." We can give the police and the district attorneys all the support and funding they ask for, we can enact all sorts of preventative programs and tougher penalties, but when it is all said and done, they will be the first to say that if somebody seeks to do someone harm, the police and district attorney will most likely only be able to react. This is, at its heart, a protective measure, essentially equipping Nevadans with the resources they need to defend themselves, their families, and their property. We are increasing the cost of doing business for these predators. Please join me today in telling Nevadans that they have a right to defend themselves.

**Assemblyman Horne:**

I spoke with the sponsor of the bill earlier, and I do have concerns primarily in Section 2. Ms. Allen, you do not believe current law, as written, encompasses those examples you used of a person who enters your home? Under current law, if he breaks into a home, and the inhabitant kills him, is the person who acted in self-defense not protected under current law?

**Assemblywoman Allen:**

I see this as a preventative measure. I do not believe the victim should be responsible for proving how much fear they experienced. How do you do that? It is very malleable.

**Assemblyman Horne:**

In the reasonable person standard, if someone enters your home and you say you feared for your life because they were not invited and they broke in, you have met that standard. I do not know of anyone who has been prosecuted for that type of self-defense. In the case of a carjacking, I do not know of anyone who has been prosecuted because someone said that was not reasonable.

My concern with the bare fear standard is that all a person has to do is say "I was afraid." That is it. That particular person's fear may not be reasonable. I used the example of me walking down the street and, in some places, doors lock and women cross to the other side. Somebody could be afraid of me or I could walk into a convenience store late at night and the clerk shoots me because he thinks I am the same guy who robbed him last week. That is a bare fear, and he is justified in doing it if we change the language the way you want to. There is a reason we want it to be a reasonable fear, not just somebody who is hypersensitive. That is my concern.

**Assemblywoman Allen:**

In your scenario, Mr. Horne, a jury could still determine there was no threat exhibited in the first place. Therefore, that would negate any trigger of justifiable homicide.

**Assemblyman Horne:**

Which scenario?

**Assemblywoman Allen:**

The scenario where you pose no threat to someone but they shoot you.

**Assemblyman Horne:**

If you change the bill the way you stated, all they have to express is that they had a bare fear.

**Assemblywoman Allen:**

Under self-defense, correct, but whether or not it was justifiable homicide would be based on whether or not there was a threat. If there was no threat, then the justifiable homicide kicks in, correct?

**Assemblyman Horne:**

No. As I read it, you take all that away.

**Assemblywoman Allen:**

I am saying in practicality.

**Assemblyman Horne:**

That is my concern. In taking the reasonableness out of it, it opens it up to instances where you are going to have the hypersensitive person be justified in a homicide. I have not heard of any anecdotal evidence that somebody was defending themselves in their home or in their car and was prosecuted for doing so. I do not see how the current law is not working.

**Chairman Anderson:**

Ms. Allen, do you have any examples?

**Assemblywoman Allen:**

We learned in this committee, Mr. Chairman, preventive measures are good because two years from now we could come back and say, there was a carjacking and someone was defending themselves and ended up in jail.

**Assemblyman Segerblom:**

In Section 3 where you add the language to the person who committed the killing, that would apply to any of these justifiable homicides, correct?

**Assemblywoman Allen:**

The bill extends this to motor vehicles.

**Assemblyman Segerblom:**

You are also expanding how justifiable homicide would work for all justifiable homicides?

**Assemblywoman Allen:**

Correct.

**Chairman Anderson:**

There are two things we are doing with this particular piece of legislation. We are changing the definition and coming to a lesser standard, and we are adding motor vehicle.

**Assemblywoman Allen:**

Correct.

**Lynn Chapman, Vice President, Nevada Eagle Forum:**

We are in support of this bill, but I do have a question. I was talking to a rancher and he asked if a rancher is out five miles from his home, on his land, and somebody approached him on his property, is he covered?

**Chairman Anderson:**

I would guess it would probably be a matter for the jury to decide. I somehow do not think this would be helpful in showing where the threat was.

**John Wagner, representing the Burke Consortium, Carson City:**

We are in support of this bill. There is a scenario that has not been pointed out by Assemblywoman Allen that was pointed out to me by a judge. A person was stopped at a stop sign or a signal and a gang came up to his window and claimed to be collecting money for a defense fund. The gang member said, "You will be making a donation, and we just want to know how much you are going to donate." The driver took his licensed gun out of his coat and put it down on the seat and the gang member said, "Well, we do not feel you need to make a contribution at this time." It could have gotten violent if he had not put that weapon down on the seat. He was not really in fear of his life unless they had tried to assault him in his vehicle.

Motor homes should also be included since they are vehicles. We should not have to make distinctions between using self-defense in a car versus your home.

**Joseph Turco, Public Advocate, American Civil Liberties Union of Nevada:**

I rise to oppose the bill. Ninety-nine percent of the time, my friends at the defense bar and the American Civil Liberties Union (ACLU) are on the same page on things. This is one of those times when I have to depart from defense counsel's position.

Your life is a liberty interest, and we cannot create such a subjective standard. The Vice Chairman said it better than I could. We judge one another with the reasonableness standard. This standard is far too subjective, in our view. We are talking about taking a life. What goes on in the mind of the person killing the

other is relevant, but it is judged by an objective reasonableness and this is purely subjective.

Let the record also show that the ACLU is coming down on the side of the victim in this case.

**Assemblyman Mabey:**

Mr. Turco, tell me how the current law is more objective. Why would it be more subjective if we changed the law? I do not see how it can be objective.

**Joseph Turco:**

I am not a specialist in criminal defense, but a jury looks at facts and they judge those facts; not law, facts. The behavior of the defendant is weighed against the reasonable person standard. A silly, unreasonable, unjustified fear would get someone off the hook, whereas objectively, in self-defense, the jury would look at the behaviors and judge them by a community standard.

**Assemblyman Horne:**

The objective standard now, being the reasonable person standard, asks, would any other person standing in that person's shoes at the time have acted in the same manner? That is the objectivity of it. If you take that away, as this bill does, you ask whether the person at the time was afraid. That would be subjective. It does not matter whether a reasonable person would have been afraid in that situation. Right now we ask, "Would any other person in the same situation have done the same thing?" That is the difference.

**Assemblyman Mabey:**

I am a physician, so when someone comes in and has an objective finding, that means to me their blood pressure is 180 over 90, or whatever. That is an objective finding. What Assemblyman Horne just told me still seems subjective to me. How can anyone know what was in that person's mind when some guy walked in his house and he killed him? Sure, most people would not have killed him, but he is not like most people. I do not see how it can be subjective or objective because you cannot know how that guy felt. You can know what your blood pressure or pulse is, but you cannot know how he felt.

**Joseph Turco:**

With all due respect, I submit that you can. You ask the defendant, "What was in your mind when you killed that guy?" Then you take his answer and ask whether that is reasonable. That is why the reasonable standard is reasonable.

**Chairman Anderson:**

I guess it is a question of whether you trust the jury or not. Do you believe that 12 people can make those kinds of decisions given the facts, even if you have not established a set of objective values as when you measure blood pressure?

**Assemblyman Goedhart:**

There was a case in Arizona where a man was hiking through the national forest and another person charged him, screaming at him. The man pulled his weapon and shot him in what he believed to be self-defense. The jury said because of the way the statute was written, it did not constitute self-defense and therefore he is in jail with a ten-year prison sentence. He is a school teacher in his mid-fifties with six kids. I was wondering if you had heard about that particular case and whether that was different law than what is currently serving Nevada.

**Joseph Turco:**

I think these are rare circumstances indeed. To change the standard on one celebrated case might be too much. That jury in Arizona must have not found that what he did was reasonable. I cannot think of any other reason they would have found him guilty. I do not always have to come here and talk about unintended consequences. There are a lot of scenarios where people are going to be killing other people, and the rest of us are going to say that it seems really ridiculous. You could say, guess what, this person had bare fear and they are off the hook.

**Jason Frierson, Deputy Public Defender, Office of the Public Defender, Clark County:**

We certainly understand the provisions dealing with vehicles, and the concerns on either side with the remainder of the bill have already been expressed.

**Assemblywoman Allen:**

I would just like to remind the Committee that here in Nevada we do not have a duty to retreat law—meaning—if someone comes in a home uninvited and the homeowner take arms against him, the homeowner is not responsible. So we already have law to protect homeowners. This just changes it from a reasonable fear to a bare fear. I agree with Dr. Mabey that both are subjective because you have to determine what is in the person's mind, which is difficult and will always be up to a jury. But lowering the standard will allow for Nevadans to feel as though they can protect themselves in their vehicles.

**Chairman Anderson:**

I will close the hearing on A.B. 398.



We are going to have to rescind the motion where we passed A.B. 323. It should have carried with it a statement on the face that it has an unfunded mandate.

ASSEMBLYMAN SEGERBLOM MOVED TO RECONSIDER THE DO PASS MOTION ON ASSEMBLY BILL 323.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSON WAS ABSENT FOR THE VOTE.)

Let us entertain a motion on A.B. 323 to amend and do pass, the amendment being to recognize this is an unfunded mandate in the face of the bill.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 323.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSON WAS ABSENT FOR THE VOTE.)

We have one bill to introduce from the Attorney General's office. BDR 3-502 establishes requirements concerning agreements between debtors and third parties for assistance in the recovery of proceeds of a foreclosure sale and providing other matters pertaining relative thereto.

**BDR 3-502**– Revises provisions governing deceptive trade practices relating to foreclosure consultants. (Later introduced as [Assembly Bill 560](#).)

ASSEMBLYMAN MANENDO MOVED FOR COMMITTEE INTRODUCTION OF BDR 3-502.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSON WAS ABSENT FOR THE VOTE.)

**Chairman Anderson:**

We are recessed [at 9:59 a.m.]. The meeting will reconvene behind the bar during Floor session.

I call this meeting back to order from recess [at 11:29 a.m.]. All members are present. We have a quorum.

**Chairman Anderson:**

We need to introduce a bill draft.

**BDR 3—227**—Establishes certain alternative methods of dispute resolution in domestic relations cases. (Later introduced as [Assembly Bill 571](#).)

ASSEMBLYMAN CONKLIN MOVED FOR THE COMMITTEE INTRODUCTION OF BDR 3-227.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chairman Anderson:**

The meeting is now recessed [at 11:32 a.m.]. The meeting will reconvene behind the bar at a later time.

**Chairman Anderson:**

Call the meeting back from recess [at 12:23 p.m.].

All members are present except Assemblyman Manendo, who is excused, we have a quorum.

We have one more bill draft.

**BDR 41-102**—Provides for continued operation of the Nevada Gaming Commission and the State Gaming Control Board during a budgetary or other fiscal crisis. (Later introduced as [Assembly Bill 589](#).)

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ASSEMBLYMAN CONKLIN MOVED FOR THE COMMITTEE  
INTRODUCTION OF BDR 41-102.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN MANENDO WAS  
ABSENT FOR THE VOTE.)

**Chairman Anderson:**

The meeting is now recessed [at 12:27 p.m.]. The meeting will reconvene  
behind the bar at a later time.

**Chairman Anderson:**

Meeting is called to order from recess [at 5:14 p.m.].

**Chairman Anderson:**

Meeting is adjourned [at 5:15 p.m.].

RESPECTFULLY SUBMITTED:

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Doreen Avila  
Recording Secretary

RESPECTFULLY SUBMITTED:

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Angela Flores  
Transcribing Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** March 26, 2007

**Time of Meeting:** 8:30 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance roster
A.B. 58	C	Jennifer Chisel, Committee Policy Analyst	Memorandum relating to negligence standard for first degree murder
A.B. 323	D	Assemblywoman RoseMary Womack	Fiscal impact report
A.B. 323	E	Darrell Wade	Prepared testimony